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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,926	02/03/2004	Jared Waxman		1649

7590

07/26/2005

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EXAMINER

SWIA TEK, ROBERT P

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/770,926

Applicant(s)

WAXMAN ET AL.

Examiner

Robert P. Swiatek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-20 is/are allowed.
- 6) ☒ Claim(s) 1,2,4 and 6-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Bogdahn (US 6,148,773: Ref. 7 on Information Disclosure Statement filed 3 February 2004). The Bogdahn leash assembly includes a housing 4; a spring-biased reel 7, 70; a leash 3 coiled within the housing and extendable through an exit opening 6 in the housing; a unidirectional lock element 9 having an inner end for engaging, ratchet-like, a tooth 25 on the reel 7,70; and a toggle lock 11. If the inner end of the lock element 9 is firmly held (clamped) against the surface of the reel 7, 70 between teeth 25—as by using the toggle lock 11 or pushing manually downwardly upon the outer end of the element 9—the reel itself would be unable to rotate either clockwise or counterclockwise due to friction between the lock and the outer periphery of the reel 7, 70. Unwinding of the leash also would be prevented by engagement of the step of a tooth 25 with the lock element 9 (as shown in Figure 3 of Bogdahn). However, when downward pressure upon the lock element 9 is released so as to disengage reel 7, 70, “reel rotation in a retract direction over the full range of rotation of the reel as slack occurs” is permitted (see column 4, lines 46-50, of Bogdahn). It is noted that a user of the leash assembly could elect not to release downward

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pressure upon the lock element 9 when slack occurs, so that the reel would not rotate at all. While this "all or nothing" approach to using the Bogdahn leash is not identical to the functioning of the leash device of the instant invention, the language of claim 1 is felt to be broad enough to encompass this scenario.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bogdahn in view of Boughton et al. (US 6,619,313 B2). The Bogdahn leash assembly lacks a rotation dampener to limit leash retraction speed. However, the patent to Boughton et al. teaches the use of a dampener 15 to mitigate unwanted rotational velocity of a drum 4 and thus prevent possible tangling of a strand (in this case, a hose) disposed about the drum. It would have been obvious, therefore, to employ a dampener with the Bogdahn reel 7, 70, in view of the patent to Boughton et al. that a dampener prevents excess rotational velocity of a reel and consequent tangling of a strand wrapped around it.

Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bogdahn in view of Vaccari (US 2003/0145804 A1). The Vaccari publication discloses a retractable leash having a clip 27 (in the form of a strap) extending across the bight of an opening adjacent a casing 11 and a handgrip 14, thereby allowing the leash to be attached temporarily to a freestanding structure. While the Bogdahn leash assembly lacks such a clip, it would have been obvious to one skilled in the art to incorporate a clip into the bottom portion of the handle 5 of

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Bogdahn so it could be hung or otherwise connected to a projection on a wall structure, in view of the publication to Vaccari. As to claim 9, the closed opening formed through the housing 4 of Bogdahn and defined in part by handle 5 is construed as constituting a notch (see Figure 1 of Bogdahn).

Claims 10, 11, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vaccari in view of Gilman (US 1,826,465). The Vaccari lead includes a handle 14 integral with a housing 11; however, the lead does not include a clip separate from the opening encompassed by the handle 14. However, it would have been obvious to one skilled in the art to employ a separate clip with the housing 11 of Vaccari, in view of the patent to Gilman that a clip (see element 14 of Gilman) permits attachment of accessory devices to a reel. Obviously the clip would be capable of receiving the leash if a user so desired.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vaccari in view of Gilman as applied to claim 10 above, and further in view of Boughton et al. While a rotation dampener is not shown as being used in conjunction with the retractable lead of the combination Vaccari as modified by Gilman, it would have been obvious to one skilled in the art to employ such a dampener with the lead, in view of the patent to Boughton et al. that a dampener prevents excess rotational velocity of a reel and consequent tangling of a strand wrapped around it.

Claims 14, 15 are rejected under 35 U.S.C. 102(a) as being anticipated by Boughton et al. The hose pipe of Boughton et al., while not nominally being a leash, nonetheless could be coupled to an animal—as by wrapping it about its torso, for example—such that the animal was functionally restrained. The Boughton et al. hose reel is deemed to be portable in the sense that

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two or more individuals could lift it manually (although conceivably a single strong individual could lift it, even if for but a short period of time).

Claims 1, 2, 4, 6-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. In claim 1, lines 7, 8, it is unclear what is meant by the expression "over the full range of rotation of the reel."

The drawings are objected to because reference numeral "22" does not appear. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicants will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Applicants' arguments filed 12 May 2005 have been fully considered but they are not persuasive. Claims 1, 2, 4, 6-15 are not believed allowable for the reasons set forth above.

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Applicants' amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Summary: Claims 1, 2, 4, 6-15 have been rejected; claims 3, 5 have been canceled; claims 16-20 have been allowed.

RPS: 571/272-6894  
13 July 2005

*Robert P. Swiatek*  
ROBERT P. SWIATEK  
PRIMARY EXAMINER  
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